PATENTS
UV-137 Cont. 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants	:	Jerry Alten et al.
Application No.	:	09/410,853 Confirmation No. : 7565
Filed	:	October 1, 1999
For	:	IMPROVED ELECTRONIC TELEVISION PROGRAM GUIDE SCHEDULE SYSTEM AND METHOD
Art Unit	:	2424
Examiner	:	Annan Q. Shang

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

New York, New York
January 21, 2009

AMENDED APPEAL BRIEF - REPLACEMENT SECTION

Madam:

In response to the December 24, 2008 Notification of Non-Compliant Appeal Brief, appellants are submitting this Amended Appeal Brief pursuant to 37 C.F.R. § 41.37(d). Pursuant to MPEP § 1205.03, this Amended Appeal Brief only includes the defective "Summary of Claimed Subject Matter" and "Argument" sections and is not an entire new brief.

Appellants believe that no fee is required connection with this Amended Appeal Brief. However, the Director is hereby authorized to charge any fees that may be due, or credit any overpayment of the same, to Deposit Account No. 06-1075.

REPLACEMENT SECTION

(v) Summary of Claimed Subject Matter

Independent claim 1 relates to a method for providing help information that explains to a user how an electronic television program guide operates. *See, e.g.,* specification, page 21, lines 14-28. The current operating mode of the electronic television program guide is tracked and stored as the user operates the guide. *See, e.g.,* specification, page 21, line 34-page 22, line 3. A user input is received and in response to the user input, the help information that explains how the electronic program guide operates is provided. *See, e.g.,* specification, page 22, lines 3-6. The help information that is provided is based on the stored current operating mode of the guide. *See, e.g.,* specification, page 22, lines 3-6.

Similarly, independent claim 14 relates to a system that provides help information that explains to a user how an electronic television program guide operates. *See, e.g.,* specification, page 21, lines 14-28. The current operating mode of the electronic television program guide is tracked and stored as the user operates the guide. *See, e.g.,* specification, page 21, line 34-page 22, line 3. A user input is received and in response to the user input, the help information that explains how the electronic program guide operates is provided. *See, e.g.,* specification, page 22, lines 3-6. The help information that is provided is based on the stored current operating mode of the guide. *See, e.g.,* specification, page 22, lines 3-6.

Similarly, independent claim 27 relates to a system for providing help information that explains to a user how an electronic television program guide operates. *See, e.g.,* specification, page 21, lines 14-28. The electronic program

guide is programmed to track and store the current operating mode of the electronic television program guide as the user operates the guide. *See, e.g.,* specification, page 21, line 34-page 22, line 3. The electronic program guide is programmed to receive a user input and in response to the user input, provide to a video display generator for display, the help information that explains how the electronic program guide operates. *See, e.g.,* specification, page 22, lines 3-6. The help information that is provided is based on the stored current operating mode of the guide. *See, e.g.,* specification, page 22, lines 3-6.

Similarly, independent claim 40 relates to a machine-readable media for use with an electronic television program guide. The computer-readable medium comprises program logic recorded thereon for tracking and storing the current operating mode of the electronic television program guide as the user operates the guide (see, *e.g.*, page 21, line 34-page 22, line 3), receiving a user input and in response to the user input, providing the help information that explains how the electronic program guide operates (see, *e.g.*, page 22, lines 3-6). The help information that is provided is based on the stored current operating mode of the guide (see, *e.g.*, page 22, lines 3-6).

(vii) Argument

A. Claims 1, 4, 5, 13, 14, 17, 18, 26, 27, 30, 31, 39, 40, 42, 43, 47 and 52-59

Claims 1, 4, 5, 13, 14, 17, 18, 26, 27, 30, 31, 39, 40, 42, 43, 47 and 52-59 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Richards.

1. The requirements for a *prima facie* obviousness rejection have not been met

To establish *prima facie* obviousness, all of the claim limitations must be taught or suggested by the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). "All words in a claim must be considered in judging the patentability of that claim against the prior art."

In the rejection of claims 1, 14, 22 and 40 over Young in view of Richards, the Examiner concedes that Young fails to teach appellants' claimed feature of "tracking and storing a current operating mode of the electronic program guide as the user operates the electronic television program guide," and providing help information based on the stored current operating mode (Office Action, page 6). The Examiner then attempts to find this claim feature in Richards.

Contrary to the Examiner's contention, however, Richards also fails to teach this feature of appellants' claims.

2. The combination of Young and Richards does not disclose "tracking and storing a current operating mode ... of the guide as the user operates"

The Examiner contends that Richards discloses tracking and storing a current operation mode as the user operates the electronic program guide.

As an initial matter, the Examiner cites almost three quarters of the specification, excluding the programming specifications ("figs. 1-4, col. 1, l. 61-col. 2, l. 61, col. 3,

l. 1-col. 4, l. 33, col. 5, ll. 8-25, l. 46-col. 6, l. 9, col. 7, l. 7-47 and 47-col. 8, l. 1+," see Office Action, p. 6) without specifically pointing to disclosure showing how the Richards system tracks and stores an operating mode as the user operates the guide. Appellants have scoured the reference and have too failed to identify any disclosure suggesting that Richards operates as required by appellants' claims.

In fact, Richards does not operate as contended by the Examiner. Contrary to appellants' claimed approach, in which the guide tracks and stores the operating mode to provide immediate access to contextual help information, the Richards system does not always know the current mode of the system. Instead, the Richards system provides three different levels of help by determining current system variables upon receiving a help request, and providing help associated with the determined system variables.

First level help is provided in response to the user pressing the Help key once (col. 7, ll. 25-26). In response to the user interaction, a help message that relates to the box or panel located under the pointer is provided (col. 7, ll. 26-29). Unlike other levels of help, the first level help is "provided by the application concerned" (col. 7, ll. 34-35) without first identifying or setting system variables (e.g., col. 8, ll. 55-62). Thus, because the application providing the first level help does not identify or set system variables, it cannot track and store a current operating mode of the system -- the application cannot inherently know, much less track and store the overall system variables without being told by the system. Accordingly, the first level help provided by Richards does not operate by tracking and storing a current operating mode of the system as the user operates the system.

Second level help is provided when the user presses the Help key twice (col. 7, ll. 36-40). In response to detecting that the Help key was pressed twice, the application requesting help calls a Help application and moves to its QUEUE block, which sets system variables (i.e., S.Help.Facility, S.Help.Application, S.Help.Panel and S.Help.Box) (col. 8, ll.59-63, cols. 45-46, ll. 13-17). To set the system variables, the QUEUE block calls a DETSUBJECT procedure, used to determine the subject for which help is provided (cols. 45-46, l. 19). The DETSUBJECT procedure examines the appropriate variables for data passed from the QUEUE block, and sets the "variables 'FacName,' 'AppName,' 'PanName,' and 'BoxName'" to the facility, application, panel and box for which help has been requested (cols. 21-22, ll. 6-11, ll. 17-21). The QUEUE block then identifies and displays help information based on the set variables using a SETPOINTERS procedure that "determines the name of the datastore in which Help for the required subject will be found, and sets up pointers to the columns in the help index and the help text tables in the datastore" (cols 35-36, l. 29-cols. 37-38, l. 2).

Thus, second level help is provided by determining, in response to receiving the request for second level help and only at the time the request is received, the facility, application, panel and box of the application for which help is requested. Accordingly, the Richards system does not track and store an operating mode as the user operates the system to provide second level help, but rather identifies, upon request, system variables used for providing the help based on the known current facility, application, panel and box for which help was requested.

Third level help is provided in response to a user selecting a "Tutorial" box in the help window, after having

first viewed second level help (col. 7, ll. 63-65). In response to selecting the "Tutorial" box (e.g., identified by the SELECT block of the Help application, cols. 49-50, ll. 14-22), the TUTSELECT procedure is called. The TUTSELECT procedure sets up the variables used to pass the subject for the tutorial and starts the HelpTut task, which provides a tutorial for the user on the specified subject (cols. 19-20, ll. 11-15; cols. 41-42, ll. 7-12). Thus, the third level help uses the context of the second level help to provide the appropriate tutorial. Accordingly, third level help is not provided in response to tracking and storing a current operation mode as the user operates the system, as required by appellants' claims, but rather provided by identifying, upon request to access third level help, the appropriate system variables.

In view of the foregoing, Richards and Young, whether taken alone or in combination, fail to show or suggest "tracking and storing the current operating mode of an electronic television program guide as a user operates the guide" and "providing help information based on the stored current operating mode," as required by appellants independent claims 1, 14, 27, and 40. Therefore, appellants respectfully submit that the Examiner has not established *prima facie* obviousness, because the prior art references, when combined, fail to teach or suggest all of the claim limitations (MPEP § 2143).

Accordingly, appellants respectfully submit independent claims 1, 14, 27, and 40 are not obvious in view of the cited references. Dependent claims 4, 5, 13, 17, 18, 26, 30, 31, 39, 42, 43, 47 and 52-59, each of which includes all the limitations of one of independent claims 1, 14, 27 or 40, are not obvious for at least the same reasons.

B. Claims 2, 6, 7, 15, 19, 20, 28, 32, 33, 41, 44 and 45

Claims 2, 6, 7, 15, 19, 20, 28, 32, 33, 41, 44 and 45 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Richards and further in view of Palmer. Appellants submit that dependent claims 2, 6, 7, 15, 19, 20, 28, 32, 33, 41, 44 and 45 are found allowable over Young, Richards and Palmer, whether taken alone or in combination, for at least the reasons that independent claims 1, 14, 27 and 40 are patentable over Young and Richards, whether taken alone or in combination.

C. Conclusion

For the foregoing reasons, appellants submit that Young and Richards, whether taken alone or in combination, do not render unpatentable any of appellants' claims 1, 4-5, 13-14, 17-18, 26-27, 30-31, 39-40, 42-43, 47 and 52-59. Appellants further submit that Young, Richards and Palmer, whether taken alone or in combination, do not render unpatentable any of appellants' claims 2, 6-7, 15, 19-20, 28, 32-33, 41, and 44-45. The Final Office Action's rejections of these claims under 35 U.S.C. § 103(a) should therefore be reversed.

Appellants respectfully request that the above replacement section be replaced with the corresponding section submitted in the Appeal Brief filed on May 5, 2008.

Early and favorable consideration is respectfully requested.

Respectfully submitted,

/Gall C. Gotfried/

Gall C. Gotfried
Registration No. 58,333
Agent for Appellants
Customer No. 75563